# Commonwealth of Kentucky
# Workers' Compensation Board

**OPINION ENTERED: February 7, 2014**

CLAIM NO. 197619345

GENESCO, INC. PETITIONER

VS. **APPEAL FROM HON. WILLIAM J. RUDLOFF, ADMINISTRATIVE LAW JUDGE**

DELLA WOODARD;
JAMES M. DONLEY, M.D.;
and HON. WILLIAM J. RUDLOFF,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

**OPINION**
**VACATING AND REMANDING**

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BEFORE: ALVEY, Chairman, STIVERS and RECHTER, Members.

**ALVEY, Chairman.** Genesco, Inc. ("Genesco") seeks review of the amended opinion and order on remand rendered October 2, 2013 by Hon. William J. Rudloff, Administrative Law Judge ("ALJ") resolving a medical fee dispute in favor of Della Woodard ("Woodard"), finding the services of a private certified nurse's aide ("CNA") reasonable and necessary for

the cure and relief of her 1974 work-related right arm and low back injuries. Genesco also appeals from the November 12, 2013 order overruling its petition for reconsideration.

On appeal, Genesco argues the ALJ erred as a matter of law in finding compensable the assistance of a private CNA since no medical evidence establishes such services are causally related to Woodard's 1974 work injuries. Genesco also argues the ALJ misapplied the law and precedent with respect to awarding services from a private nurse's aide, and cites to Bevins Coal co. v. Ramey, 947 S.W.2d 55 (Ky. 1997). We vacate and remand for additional findings of fact regarding whether the requested services are causally related to Woodard's 1974 work injuries.

Woodard filed a motion to reopen and a medical fee dispute on July 19, 2012 seeking reimbursement of expenses associated with the hiring and compensation of Margaret Turner ("Turner"), a private CNA. The motion states Turner assists Woodard with activities of daily living such as driving, housekeeping, opening food containers, mopping, other household cleaning tasks, tying her shoes, lifting, carrying, caring for indoor cats and assisting in personal

grooming tasks.[1] Hon. J. Landon Overfield, Chief Administrative Law Judge, sustained Woodard's motion to reopen and joined Dr. James M. Donley as a party in orders dated September 20 and 21, 2012.

The ALJ rendered a decision on March 1, 2013 finding compensable the requested assistance from Ms. Turner. Genesco filed a petition for reconsideration on March 15, 2013, requesting the ALJ reconsider the evidentiary record, and find the requested treatment not causally related, and not reasonable or necessary for the cure and relief of the 1974 work injuries. The petition for reconsideration was denied in an order entered April 8, 2013. The claim was then appealed to this Board.

In an opinion vacating and remanding the ALJ's opinion and order on reconsideration, entered August 16, 2013, this Board held as follows:

> The ALJ's decision, as well as the order on reconsideration, is bereft of any discussion regarding whether Woodard met her burden of proving the contested services provided by Turner are casually related to the 1974 right elbow and low back injuries. Likewise, the ALJ merely made a conclusory statement he relied upon Woodard's testimony and Dr. Donley's records in finding the disputed

[1] Woodard re-filed the motion to reopen and medical fee dispute on September 7, 2012 to correct deficiencies identified by Hon. J. Landon Overfield, Chief Administrative Law Judge in an order dated August 22, 2012.

services reasonable and necessary for the cure and relief of the effects of her work injuries to her right upper extremity and her back without providing any analysis.

The ALJ did not address Genesco's points raised in the petition for reconsideration regarding the age of the original work injury and how the subsequent treatment rendered by Dr. Donley since 1997 affected his ultimate decision. The basis for this dispute, the October 5, 2011 letter by Dr. Donley, essentially states Woodard will require routine assistance for life and is not able to go back to a regular routine in caring for herself. The letter is silent regarding which of her ailments caused the need for a private CNA, or whether the requested service is related to, and reasonable and necessary treatment of the 1974 work injuries.

This Board is cognizant of the fact an ALJ is not required to engage in a detailed discussion of the facts or set forth the minute details of his reasoning in reaching a particular result. The only requirement is the decision must adequately set forth the basic facts upon which the ultimate conclusions were drawn so the parties are reasonably apprised of the basis of the decision. Big Sandy Community Action Program v. Chafins, 502 S.W.2d 526 (Ky. 1973). However, the parties are entitled to findings sufficient to inform them of the basis for the ALJ's decision to allow for meaningful review. Kentland Elkhorn Coal Corp. v. Yates, 743 S.W.2d 47 (Ky. App. 1988); Shields v. Pittsburgh and Midway Coal Mining Co., 634 S.W.2d 440 (Ky. App. 1982).

On remand, the ALJ shall specifically address whether Woodard met

> her burden of proving work-relatedness and cite to specific evidence upon which he relied. The ALJ shall outline the medical testimony or records establishing the contested treatment or care are causally related to the 1974 work injuries in the form of findings of fact sufficient to advise the parties and this Board of the basis for his decision. Likewise, the ALJ shall specifically address whether Genesco met its burden of proving the contested services of a private CNA are unreasonable or unnecessary, citing to the specific evidence upon which he relied.
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> Accordingly, the ALJ's determination the disputed medical expenses are compensable as set forth in the March 1, 2013 opinion and the April 8, 2013 order overruling Genesco's petition for reconsideration are **VACATED**. This claim is **REMANDED** for additional findings consistent with the views expressed herein.

The ALJ issued an amended opinion and order on remand on October 2, 2013. The ALJ summarized the evidence from Woodard and Dr. James Donley as follows:

> The plaintiff, **Della Woodard**, testified at length in her deposition and at the Final Hearing. The plaintiff is right-handed and lives alone at her residence in Hopkinsville, Kentucky. The plaintiff testified that her current treating physician for her right elbow is Dr. James Donley. He has also treated her for her back. Ms. Woodward testified that due to her right elbow injuries and painful symptoms, she cannot take care of her personal needs or take care of the maintenance required

at her home. She has been required to hire Margaret Turner to take care of her personal requirements and also take care of her home. Ms. Turner works three hours a day and three times a week. The plaintiff pays Ms. Turner $10.00 an hour or $90.00 a week and $360.00 a month. Ms. Woodward pays Ms. Turner out of her personal income. The plaintiff testified that she would like to have Ms. Turner come to her residence seven days a week for three hours a day. The plaintiff testified that her right elbow injuries and symptoms are the cause of her needs for personal assistance. Ms. Woodard testified that she cannot get her right hand up to her face, that she can cook with only one hand, that she cannot cut food, that she cannot do her dishes, that she cannot tie her shoes, that she cannot open a jar, that she cannot button her blouse, that she cannot wash her hair and that she has difficulty and often needs help taking a bath.

The plaintiff filed medical records from her treating orthopedic surgeon, **Dr. James Donley**. In his letter dated October 5, 2011 Dr. Donley stated that Ms. Woodard is his patient and that she will require routine assistance for life. In his medical record dated April 18, 2012 Dr. Donley lists as Ms. Woodard's chief complaint her right elbow. ***He covers her medical history and his findings upon physical examination.*** His diagnoses at that time included pain in the right elbow, pain in the right knee joint, osteoarthritis in the right elbow, lumbar pain and degenerative lumbar or lumbosacral disc problems, as well as lumbar spondylolisthesis. In his medical record dated December 12, 2012 Dr. Donley lists as Ms. Woodard's chief complaint back pain. ***He again covers***

> ***her medical history and his findings upon examination.*** He lists as Ms. Woodard's current diagnoses lumbar pain and degenerative lumbar lumbosacral disc problems and muscle spasm. (Emphasis added).

The ALJ then made the following findings regarding the treatment requested by Woodard:

> I saw and heard the plaintiff, Ms. Woodard, testify at the Hearing and make the factual determination that she was a credible and convincing witness. I also found very persuasive and compelling the medical evidence from Dr. Conley [sic], the plaintiff's long-term treating orthopedic surgeon. Based upon the totality of the evidence, and specifically the plaintiff's sworn testimony and the persuasive and compelling evidence from Dr. Donley, the treating orthopedic surgeon, all of which is covered in detail above, I make the determination that the plaintiff, Ms. Woodard, has met her burden of proving the work-relatedness of the care from Ms. Turner, which the plaintiff seeks in this proceeding. I make the factual determination that the plaintiff's request for reimbursement of expenses associated for services of Ms. Turner and the plaintiff's request for services from Ms. Turner are reasonable, necessary and work-related. Based upon the totality of the evidence, specifically including the plaintiff's sworn testimony, as covered in detail above, and the medical evidence from Dr. Donley, her treating physician, I make the factual determination that the contested treatment or care is causally related to the plaintiff's 1974 work injuries to her right upper extremity and to her back. In addition, I make the factual determination that the

> defendant has not met its burden of proving that the contested services from Ms. Turner are unreasonable or unnecessary. I base my factual determination on the totality of the evidence and specifically the sworn testimony of the plaintiff and the persuasive and convincing evidence from Dr. Donley, Ms. Woodard's treating orthopedic surgeon.
>
> I make the determination that the requested services from Ms. Turner are reasonable and necessary for the cure and relief of the effects of the plaintiff's 1974 work-related injuries and I make the factual determination that the disputed services are, therefore, compensable.

Genesco filed a petition for reconsideration arguing the evidence does not establish "the request for assistance by a private CNA was reasonable, medically necessary or causally related to the work injuries sustained nearly 40 years ago." Genesco specifically argued Dr. Donley did not state the requested treatment was causally related to the 1974 work injuries. Genesco additionally argued the basis for the utilization review denial was for a functional capacity evaluation subsequent to a new diagnosis of carpal tunnel syndrome, which Dr. Donley did not specifically relate to the 1974 work injuries. The petition for reconsideration was denied by order dated November 12, 2013.

As we stated in our previous decision, in a post-award medical fee dispute, the employer bears both the burden of going forward and the burden of proving the contested treatment or expenses are unreasonable or unnecessary. National Pizza Company vs. Curry, 802 S.W.2d 949 (Ky. App. 1991); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979); Addington Resources, Inc. v. Perkins, 947 S.W.2d 421 (Ky. App. 1997); Mitee Enterprises vs. Yates, 865 S.W.2d 654 (Ky. 1993); Square D Company v. Tipton, 862 S.W.2d 308 (Ky. 1993). The claimant, however, bears the burden of proving work-relatedness. *See* Addington Resources, Inc. v. Perkins, 947 S.W.2d 421 (Ky. App. 1997).

Here, the ALJ stated he relied upon Woodard's testimony, and "the persuasive and compelling evidence from Dr. Donley, the treating orthopedic surgeon, all of which is covered in detail above," in determining the requested services of Ms. Turner are causally related to the 1974 work injuries. The ALJ specifically cited to Dr. Donley's October 5, 2011 letter; April 18, 2012 office note; and, December 12, 2012 office note in making his determination. The ALJ specifically notes Dr. Donley, "again covers her medical history and findings upon examination."

In the October 5, 2011 letter, Dr. Donley stated as follows:

> Ms. Della Woodard is a patient of mine and it has come to my attention that I again need to inform you that Ms. Woodard will require routine assistance for life. She is not able to go back to a regular routine in caring for herself. It is my understanding that she only has Ms. Turner (her assistant) 3 hours per day.

The letter fails to state the reason Woodard requires assistance, or that the need for such assistance is causally related to the 1974 work injuries.

In the April 18, 2012 office note, Dr. Donley noted Woodard was seen for a follow up regarding previously diagnosed osteoarthritis of her right elbow. Regarding Woodard's history, the record reflects as follows:

> **Past Health History:**
> **Cardiovascular:** hypertension
> Neurologic: stroke (CVA)
> **Hematologic and Lymphatic:** anemia of unknown cause.
> Surgeries and Hospitalizations:
> **Previous surgery:**
> **.Genitourinary:** D&C; and hysterectomy.
> **.Musculoskeletal:** arthroscopic lateral meniscectomy of the right knee on 11.May.2010.
> **.Other surgery:** RIGHT ELBOW 1975, 1976, total elbow 10/25/05, Triceps reconstruction with Achilles tendon allograft 2/26/09 SPINE SURGERY.

The office note does not mention, nor does it specifically address whether the treatment rendered was causally related to the 1974 work injuries.

In the December 12, 2012 office note, Dr. Donley noted Woodard was seen for follow up of previously diagnosed degenerative disc disease of the lumbar spine. He noted, “PATIENT HAVING CHARLIE HORSES AND FOOT DRAWING.” The history reflected in the office note was the exact same as entered on April 18, 2012. Again, the note does not mention, nor does it specifically address whether the rendered treatment was causally related to the 1974 work injuries.

As we noted in our previous opinion, both parties submitted numerous records of Dr. Donley from 1997 through 2013, reflecting treatment for multiple conditions. Those medical records also reflect additional accidents and injuries occurring in the years following her work-related injuries which include falling down stairs, a motor vehicle accident, and an acute onset of right elbow pain while reaching for a bottle of shampoo while shopping. The medical records further reflect treatment for an unrelated right knee condition, and carpal tunnel syndrome.

Despite the ALJ’s statement, Dr. Donley’s records do not appear to support the determination the requested care from a CNA is causally related to the 1974 work injuries. We note, as a general rule, causation is a factual issue to be determined within the sound discretion

of the ALJ as fact-finder. Union Underwear Co. v. Scearce, 896 S.W.2d 7 (Ky. 1995); Hudson v. Owens, 439 S.W. 2d 565 (Ky. 1969). When the question of causation involves a medical relationship not apparent to a lay person, authority holds that the issue is properly within the province of medical experts and an ALJ is not justified in disregarding the medical evidence. Mengel v. Hawaiian-Tropic Northwest and Central Distributors, Inc., 618 S.W.2d 184, 186-187 (Ky. App. 1981). However, in cases involving matters of observable causation, an ALJ is free to infer proximate cause despite the absence of medical testimony establishing the fact, or even in the face of medical testimony to the contrary where the doctors have testified negatively. Id. When this second situation arises, it is well established that an ALJ is generally vested with broad authority to decide the issue. Dravo Lime Co. v. Eakins, 156 S.W. 3d 283 (Ky. 2003).

Here, the ALJ specifically stated he relied upon certain medical correspondence and records of Dr. Donley which do not appear to support his determination. Due to Woodard's myriad unrelated co-morbidities and her apparent difficulty in providing a cogent medical history as noted in her deposition, medical testimony is necessary to establish causation.

While the ALJ certainly has the discretion to rely on Dr. Donley, he must point to specific evidence which supports his determination. On remand, the ALJ must specifically outline where in the numerous records in evidence Dr. Donley points to the current need for CNA assistance is due to Woodard's 1974 work injuries. As noted in Cornett v. Corbin Materials, Inc., 807 S.W.2d 56 (Ky. 1991), the ALJ must provide a sufficient basis to support his determination. The parties are entitled to findings sufficient to inform them of the basis for the ALJ's decision to allow for meaningful review. Kentland Elkhorn Coal Corp. v. Yates, 743 S.W.2d 47 (Ky. App. 1988); Shields v. Pittsburgh and Midway Coal Mining Co., 634 S.W.2d 440 (Ky. App. 1982). Here he has failed to do so.

Finally, we note Genesco's argument the evidence does not support the ALJ's determination the treatment rendered by Ms. Turner is reasonable and necessary, and the ALJ misapplied the award of such services pursuant to Bevins Coal, supra. Because the ALJ has failed to support his determination regarding whether the requested treatment is causally related to Woodard's 1974 work injuries, we decline to address Genesco's argument regarding reasonableness and necessity at this time.

Accordingly, the ALJ's determination the disputed medical expenses are compensable as set forth in the October 2, 2013 opinion and the November 12, 2013 order overruling Genesco's petition for reconsideration are **VACATED**. This claim is **REMANDED** for additional findings consistent with the views expressed herein.

ALL CONCUR.

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